

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-205921

DATE: July 8, 1983

MATTER OF: Railroad Retirement Board--Dual Benefits
Payments Account

DIGEST:

1. Authority of Railroad Retirement Board to borrow from Railroad Retirement Account to make payments from Dual Benefits Payments Account is limited to the 30-day period before the beginning of the fiscal year.
2. The authority of the Railroad Retirement Board to borrow funds from the Railroad Retirement Account to permit payment of the Dual Benefits Payments for the first month of a fiscal year does not depend upon the existence of an enacted appropriation or continuing resolution for the Dual Benefits Payments Account for the new fiscal year.
3. Since the authorization for appropriation to the Dual Benefits Payments Account authorizes an annual appropriation, any amounts remaining in the account at the end of a fiscal year must be returned to the Treasury under 31 U.S.C. § 1552(a)(2) unless the actual appropriation act provides carry-over authority.
4. Under the Omnibus Reconciliation Act of 1981, interest may be earned on funds appropriated to the Dual Benefits Payments Account if invested by the Secretary of the Treasury and this interest credited to the Dual Benefit Payment Account. However, investment is precluded by the terms of the fiscal year 1983 appropriation to the Dual Benefits Payments Account.

We have been asked by the the Railroad Retirement Board to answer four questions concerning the Dual Benefits Payments Account created by section 1124 of the Omnibus Reconciliation and Budget Act of 1981, Public Law 97-35, 95 Stat. 639, August 13, 1981, amending 45 U.S.C. § 231n (1976). These questions are:

(1) Whether the "borrowing authority" under section 1124(a) of Public Law 97-35 is available to the Railroad Retirement Board

after the beginning of a fiscal year, but prior to an actual full appropriation to the Dual Benefits Payments Account for that year;

(2) Whether the borrowing authority is available prior to the start of a fiscal year in the absence of an enacted appropriation;

(3) What happens to any amount remaining in the Dual Benefits Payments Account at the end of a year, and

(4) Whether this Account can earn interest and, if so, whether the interest earned may be utilized during the year to pay windfall benefits.

For the reasons explained below, we have concluded as follows.

- (1) The "borrowing" authority to draw funds in advance of the fiscal year ceases at the beginning of the fiscal year.
- (2) Whatever funds are left in the Dual Benefits Payments Account at the end of the fiscal year cease to be available for payments.
- (3) Interest may be earned on funds appropriated to the Dual Benefits Payments Account if invested by the Secretary of Treasury and this interest credited to the Dual Benefits Payments Account. However, the terms of the fiscal year 1983 appropriation to the Dual Benefits Payments Account would preclude such investment.
- (4) An enacted appropriation is not a prerequisite for the exercise of the borrowing authority.

We will address these questions in the order set out above.

Question 1 - Duration of Borrowing Authority.

Section 1124(a) provides: - - -

"* * * Not more than 30 days prior to each fiscal year beginning with the fiscal year ending September 30, 1982, the Board may request the Secretary of the Treasury to transfer from the Railroad Retirement Account to the credit of the Dual Benefits Payments Account any amount not exceeding one-twelfth of the amount which the Board has determined

will be the amount of the appropriation to be made to the Dual Benefits Payments Account under the applicable Public Law making such appropriation for such fiscal year, and the Secretary of the Treasury shall make such transfer. Not more than 10 days after the funds appropriated to the Dual Benefits Payments Account for each such fiscal year are received into such Account, the Board shall request the Secretary of the Treasury to retransfer from the Dual Benefits Payments Account to the credit of the Railroad Retirement Account an amount equal to the amount transferred to the Dual Benefits Payments Account prior to such fiscal year under the preceding sentence, together with such additional amount determined by the Board to be equal to the loss of interest to the Railroad Retirement Account resulting from such transfer, and the Secretary of the Treasury shall make such retransfer." (Emphasis added.)

The explanation for this provision contained in the Conference Committee Report is that:

"* * * Because there is generally a lag between the time appropriations are enacted and the time money is received, the regular retirement account will loan funds temporarily each year to the Dual Benefits Payments Account to continue windfall payments between the start of a fiscal year and the date the dual benefits appropriation is received. This loan will be repaid, with interest, when the dual benefit appropriation is received."
H. Rep. No. 97-208, July 29, 1981, at 867.

In the view of the Railroad Retirement Board this "borrowing authority" should be interpreted to authorize the transfer of funds so as to guarantee timely payment of benefits during the lag between the start of a fiscal year and date of an appropriation. The Board's position is that section 1124(a) permits borrowing any time during a fiscal year before the full amount of the appropriation is deposited in the Dual Benefits Payments Account. According to the Board, this authority was provided to prevent what happened in December 1981 when the Department of the Treasury refused to transfer funds as requested by the Board. At that time the Board was operating under a series

of continuing resolutions and, as a result of the failure to transfer the funds when requested during a lag in enactment of a continuing resolution, approximately 400,000 annuitants received their December payments late.

The Department of the Treasury refused to transfer funds from the Railroad Retirement Account as requested because it reads section 1124(a) more restrictively than the Board. Treasury agrees with the Board that although section 1124(a) does not permit a transfer request more than 30 days before the beginning of the next fiscal year, that restriction does not establish a cut-off date for exercising the authority. However, Treasury points out that it is clear from the next sentence which describes the replacement of the amount borrowed as funds transferred "prior to such fiscal year," that the transfer is only available for the 30 days prior to the beginning of the fiscal year. The Board contends that this sentence should only be read as providing authority to transfer funds across fiscal years when it is necessary to do so.

Essentially, we agree with the position taken by the Treasury. We are inclined to read authority such as that created by section 1124(a) narrowly where there is no indication of Congressional intent consistent with the broader reading. Further, Treasury's reading of the statutory language is consistent with the legislative history explanation of its purpose, quoted above.

We are mindful of the hardships that may result from any delay in benefits. However, it appears from our reading of section 1124(a) and its legislative history that it was intended to solve a different problem than described by the Board.

While it is true that the inability to borrow under the circumstances prevented the Board from making timely payments of the Dual Benefits Payments, it is doubtful that this is the situation which prompted passage of this borrowing authority 3 months earlier. The Conference Committee Report indicates that the Committee was concerned with a recurring problem which it believed happens each year. We do not believe the possibility of a gap in appropriations during the fiscal year is what was being considered in the Conference Committee Report.

As we said earlier, we are inclined to interpret authorities such as section 1124(a) narrowly. There is no indication in the legislative history for the views expressed by

the Board. The actual problem presented by the December 1981 delay in payments occurred several months after passage of the Omnibus Reconciliation Act. The Conference Committee Report, consisting of only two paragraphs, suggests no awareness of a problem resulting from a crisis gap in "appropriations," but only a "lag between the time appropriations are enacted and the time money is received" by the account which happens "each year."

Question 2 - Necessity For an Enacted Appropriation.

The Board states that on September 29, 1982, prior to passage of any appropriation or continuing resolution for fiscal year 1983, the Department of Treasury informed the Board that in Treasury's view the borrowing authority of section 1124(a) is only available after Congress has enacted an appropriation act or continuing resolution for the new fiscal year.

The Board argues that this interpretation conflicts with the words of section 1124(a) that authorize borrowing based on "one-twelfth of the amount which the Board has determined will be the amount of the appropriation to be made * * *" According to the General Counsel, this language clearly contemplates circumstances where some form of an appropriation has not been enacted before the beginning of a new fiscal year.

The position of the Department of Treasury is that the references to a future appropriation that are stressed by the General Counsel are followed by the phrase "* * * under the applicable Public Law making such appropriation for such fiscal year * * *." This phrase suggests, according to Treasury, that the borrowing request must be based on an existing appropriation act. Further, it is possible to explain the references to the future appropriations as no more than a description of the fact that the appropriation for the next fiscal year will not be available immediately, but must await the beginning of the new fiscal year. According to Treasury's position, the legislative history makes it clear that Congress conditioned the borrowing authority on the existence of an enacted appropriation. The reason, more fully quoted above, for the borrowing authority in the conference report, id., is:

"Because there is generally a lag between the time appropriations are enacted and the time money is received * * *"
(Emphasis added.)

The Board concedes that this is the purpose described in the Conference Report, but says there is no reason to believe that this is the only purpose for the act. Indeed, the Board argues that the only useful purpose of the borrowing authority is to cover circumstances where there is no appropriation available for the start of the next fiscal year when the payment tapes are sent to Treasury about September 20 of each year. The Board also notes that the remaining portion of the sentence from the conference report, repeated in part above, does not limit borrowing to a time period, but states that loans are to be used to continue payments "between the start of a fiscal year and the date the dual benefits appropriation is received." The Board points out that there is no qualification in this language as to when an appropriation must be made.

We agree with the Board's position. The relevant sentence in section 1124(a) requires an estimation by the Board of the amount of the appropriation "to be made" under the applicable Public Law to the Dual Benefits Payments Account. An estimation would clearly not be required in the face of an enacted appropriation. Nor would the use of the future tense be correct with reference to the applicable Public Law if it were intended that the Public Law has already been enacted before borrowing would be appropriate. We recognize that the Conference report language relied on by Treasury and quoted above refers to the lag between enactment and receipt of appropriations. However, it clearly states the purpose of the borrowing authority to be the continuation of windfall payments "between the start of a fiscal year and the date the dual benefits appropriation is received." In any event, the legislative language standing alone is sufficiently clear, in our view, to overcome the arguably inconsistent explanation of it in the Conference Report.

Question 3 - Carry-Over of Annual Appropriations.

The Dual Benefits Payments Account is authorized an annual appropriation under section 1124(a) of Public Law 97-35 as follows:

"There is hereby authorized to be appropriated to such account for each fiscal year * * * such sums as are necessary to pay during such fiscal year the amounts of annuities estimated by the Board * * *."

The Board argues that Congress intended that any unexpended amounts be carried over from year to year. The Board's reasoning is based on the requirement of section 1122(c) (to be placed in the Code at 45 U.S.C. § 231f(c)) that the Board fully expend the appropriation in a manner that provides equal monthly installments to eligible annuitants. The only way to accomplish this without either a smaller payment or a larger balloon payment for the last month is to leave a cushion amount that would not be expended at all during the fiscal year, in the Board's view.

We recognize that Congress has required the Board to come as close to the ideal, as expressed by its submission, as possible. However, we do not read the provisions of section 1122(c) as indicating an intent to permit the carry-over of budget authority. Section 1122(c) is not as restrictive as the Board describes it. First, the "equal monthly installments" are only required "for a fiscal year so far as practicable." Second, this section requires only " * * * the total amounts paid * * * shall not exceed the total sums appropriated * * * for that fiscal year." (Emphasis added.) Third, this section gives authority to the Board to prescribe regulations to achieve these objectives, thus giving the Board authority to devise some reasonable solution to the problem. See Conference Report, *id.* Accordingly, we conclude that, unless the appropriation language itself modifies the authorization of appropriation language of section 1124(a) to make it available until expended, no part of the Dual Benefits Payments Account appropriation is available for expenditure after the end of the fiscal year for which it was appropriated. Such language is not included in the fiscal year 1983 appropriation to the Dual Benefits Payments Account, Pub. L. No. 97-377, 96 Stat. 1903, December 21, 1982, quoted below.

Question 4 - Investment of Amounts in Dual Benefits Payments Account.

Section 1124(b) of Public Law 97-35 adds the Dual Benefit Payments Account to the accounts under 45 U.S.C. § 231n(e) that may be invested in Government interest bearing obligations or guaranteed obligations.

According to the Department of the Treasury, its practice has been to credit the interest earned on the investments of the other accounts (the Railroad Retirement Account and the Railroad Retirement Supplemental Account) to these accounts as permitted by section 231n(e). Treasury says it has done this despite the absence of specific

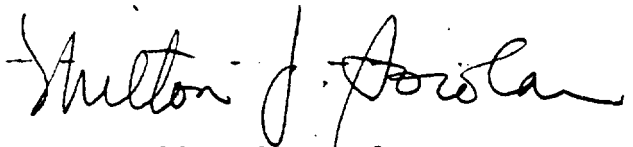
authority as is normally provided in legislation that gives accounts investment authority, such as in the case of the Social Security Trust Fund, 42 U.S.C. § 401(f) (1976). We agree with Treasury that interest has been properly credited to the accounts covered by section 231n(e). The legislative history is clear that Congress intended that the interest earned be credited to these accounts. H. Rep. 93-1345 at 17 (1974). Since Congress added the Dual Benefits Payments Account to this same provision, an intent that the interest earned on the Dual Benefits Payments Account be treated similarly is evident.

The investment authority provided, however, is only for funds "not immediately required for the payment of annuities, supplemental annuities, and death benefits." In the continuing resolution that appropriated funds for the Dual Benefits Payments Account for fiscal year 1983, Congress provides as follows:

"For payment to the Dual Benefits Payment Account, authorized under section 15(d) of the Railroad Retirement Act of 1974, \$430,000,000, which shall be credited to the account in 12 approximately equal amounts on the first day of each month in the fiscal year." Pub. L. No. 97-377, 96 Stat. 1903, December 21, 1982.

This language, by making the funds available to the Dual Benefits Payments Account in monthly installments, virtually precludes the Board from invoking its authority to direct the Secretary of the Treasury to invest the appropriation. Furthermore, the appropriation was intended to provide full funding for payments to beneficiaries for fiscal year 1983.

Accordingly, we conclude that the manner in which funds are provided to the Dual Benefits Payments Account for fiscal year 1983 precludes their investment. Investment of these funds in future years would be dependent on the language of appropriation acts.

for 
Comptroller General
of the United States